

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY HOWARD,

Plaintiff,

v.

KERN COUNTY LERDO FACILITY
MEDICAL CHIEF, et al.,

Defendants.

Case No. 1:21-cv-00931-CDB (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CLAIMS AND DEFENDANT**

14-DAY OBJECTION PERIOD

Clerk of the Court to Assign District Judge

Plaintiff Billy Howard is a state prisoner¹ proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

On November 10, 2022, the Court screened Plaintiff's complaint and found that it states cognizable claims of deliberate indifference to serious medical needs against the facility nursing staff defendants. (Doc. 16 at 6-7.) Further, the Court found Plaintiff's complaint did not state a cognizable claim against defendant chief medical director. (*Id.* at 7.) The Court therefore directed Plaintiff to file a first amended complaint curing the deficiencies in his pleading or to notify the Court that he wishes to proceed only on the claims found cognizable. (*Id.* at 7-9.)²

¹ At the time he filed his complaint, Plaintiff was housed at the state prison in Chino. (Doc. 1.) In his fourth notice of change of address, dated September 26, 2022, Plaintiff indicates he is presently housed at the Kern County Jail's pre-trial detention facility. (Doc. 14.)

² Plaintiff was previously advised concerning the use of Doe defendants and the need to identify Doe defendants before service of his complaint can be accomplished. (*See* Doc. 16 at 7, n.2 & 8.) The Court will issue a separate order permitting limited discovery for identifying Doe defendants.

On December 1, 2022, Plaintiff filed a notice that he elects “to push forward without amendments” and to proceed on the “cognizable deliberate indifference to serious medical needs claim.” (Doc. 17.) Accordingly, and for the reasons set forth in the Court’s screening order (Doc. 16), the Court RECOMMENDS that:

1. Doe Defendant Chief Medical Director be DISMISSED; and,
2. The claims in Plaintiff’s complaint be DISMISSED, *except* for the deliberate indifference to serious medical needs claims against facility nursing staff, pursuant to 42 U.S.C. § 1983; and
3. The Clerk of the Court is directed to randomly assign a district judge to this action.

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of service of these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may result in waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **December 5, 2022**


UNITED STATES MAGISTRATE JUDGE